IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

A.O. No. 1084 of 2001
(Old No. 282/1996)

Date of decision: 22nd February, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 22.2.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A. O. No. 1084 of 2001

1. Smt. Kala Devi w/o late Harish Chand
2. Km. Dinesh D/o late Harish Chand
3. Inesh Kumar S/o late Harish Chand
4. Daulat Ram S/o Late Harish Chand
5. Master Sudheer S/o Late Harish Chand

All minor through their natural guardian
And mother Smt. Kala Devi wife of late
Harish Chand r/o Harijan Basti alias Ravidas Basti,
Ram Krishan Mission Road, Kankhal,
Pargana Jwalapur, Tehsil and
District Haridwar …Appellants- Claimants

Versus

1. Sultan son of Danpat Singh
   R/o Jind, District Jind (Haryana)
   Driver of Tata Bus No. HR 31-4884
2. The General Manager, Haryana Roadways,
   Jind, District Jind (Haryana) Owner of
   Bus No. HR 31-4884 …Respondents-Opp.Parties

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Mr. Lok Pal Singh, Advocate for the Appellants.
None for the first respondent.
Mr. Subhash Upadhyaya, Advocate for the second respondent.
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JUDGMENT

Coram: Hon. Rajeev Gupta C. J.
Hon. M.M.Ghildiyal, J.

Rajeev Gupta,C. J. (Oral)

Mr. Lok Pal Singh, Advocate for the Appellants.

None for the first respondent.

Mr. Subhash Upadhyaya, Advocate for the second respondent.

They are heard.

2. This is claimants' appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal/District Judge, Hardwar vide Award dated 02.02.1996 passed in Motor Accident Petition No. 5 of 1995.

3. The claimants claimed compensation of Rs. 16,15,937/- for the death of one Harish Chand, husband of appellant no. 1 and father of appellants nos. 2 to 5, in the motor accident on 14.09.1994 when his scooter bearing Registration No. UHQ 7618 was dashed by the offending vehicle-bus belonging to the second respondent- Haryana Roadways bearing Registration NO. HR 31-4884 resulting in his instantaneous death on the spot itself. The claimants further pleaded that Harish Chand was in regular service of Bharat Heavy Electricals Ltd., Hardwar and was getting salary of about Rs. 5000/- per month.

4. The driver and owner of the offending bus contested the claim and pleaded that the deceased himself was responsible for the accident and as such they are not liable to pay any compensation to the claimants.

5. The Tribunal on the evidence led by the parties held that the deceased Harish Chand died on account of the injuries sustained by him in the accident and that the accident occurred due to rash and negligent driving by the driver of the offending vehicle-bus. The Tribunal, therefore, held the driver and owner of the offending vehicle- bus liable to pay compensation to the claimants severally and jointly. Considering the evidence led by the claimants in regard to the income of the deceased, the Tribunal assessed the income of the deceased at Rs. 1613/- per month and the dependency of the claimants at Rs. 800/- per month and Rs.9600/- per annum. By multiplying the annual dependency of Rs. 9600/- with multiplier of 15, the compensation was assessed at Rs. 1,44,000/-. The Tribunal further awarded a sum of Rs. 1000/- towards funeral expenses and Rs. 5000/- for loss of consortium to the widow. Thus, a total sum of Rs.1,50,000/- was awarded as compensation to the claimants for the death of Harish Chand in the accident with interest @ 12% per annum from the date of application (23.01.1995).

6. Sri Lok Pal Singh, learned counsel for the appellants submits that the Tribunal has erred in assessing the income of the deceased at Rs.1613/- only though the salary certificate adduced in evidence by the claimants established that the deceased’s salary was Rs. 3111/-.

7. Sri Subhash Upadhyaya, learned counsel for the Haryana Roadways on the other hand supports the Award and submits that the Tribunal has rightly assessed the income of the deceased and the claimants dependency on the material available in the record.

8. The findings that Harish Chand died on account of the injuries sustained by him in the accident and that the accident occurred due to rash and negligent driving of the offending vehicle are not in dispute in this appeal.

9. Harish Chand was in regular service in Bharat Heavy Electricals Ltd. Haridwar is established from record. He was getting monthly salary of Rs. 3111/- is also established from the salary certificate filed before the Tribunal. In our opinion, the Tribunal fell into error in assessing the income of the deceased at Rs. 1613/- only. The income of the deceased ought to have been assessed at Rs. 3111/- per month. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 3111/- per month.

10. Considering that the deceased was maintaining a scooter, we deem it proper to assess the claimants' dependency at Rs. 1500/- per month and Rs. 18,000/- per annum. By multiplying the annual dependency of Rs.18000/- with multiplier of 15, selected by the Tribunal, the compensation works out to Rs. 2,70,000/-. By adding the sum of Rs. 1000/- and Rs.5000/- awarded by the Tribunal towards funeral expenses and loss of consortium to the widow respectively, the total compensation awardable to the claimants comes to Rs. 2,76,000/-.

11. The appeal filed by the appellants under Section 173 of the Motor Vehicles Act, therefore, is allowed in part. The compensation of Rs.1,50,000/- awarded by the Tribunal is enhanced to Rs. 2,76,000/-. The enhanced amount of compensation shall carry interest @ 6% per annum from the date of application (23.01.1995). No order as to costs.

(M.M.Ghildiyal , J.) **(Rajeev Gupta, C.J.)**

22.02.2006
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